BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

ARLEN H. PROFFITT)
Claimant	
)
VS.)
)
WESTLAKE HARDWARE, INC.)
Respondent) Docket No. 1,032,436
)
AND)
)
OLD REPUBLIC INSURANCE CO.)
Insurance Carrier)

<u>ORDER</u>

Respondent and its insurance carrier request review of the October 30, 2009 Award by Administrative Law Judge Bruce E. Moore. The Board heard oral argument on February 9, 2010.

APPEARANCES

Mitchell W. Rice of Hutchinson, Kansas, appeared for the claimant. Mark E. Kolich of Lenexa, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge (ALJ) found claimant sustained an accidental injury arising out of and in the course of his employment which left him permanently and totally disabled.

Respondent requests review of the following: (1) whether claimant's accidental injury arose out of and in the course of employment; and, (2) nature and extent of claimant's disability. Respondent argues claimant has not met his burden of proof to establish that he suffered an accidental injury arising out of and in the course of his employment. In the alternative, if the claim is compensable, respondent argues that claimant is capable of performing sedentary work and therefore would be entitled to an 89 percent work disability based upon an average of the three task loss opinions and a 100 percent wage loss.

Claimant argues the ALJ's Award should be affirmed.

IT IS SO ORDERED.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The ALJ's Award sets out findings of fact and conclusions of law that are detailed, accurate and supported by the record. It is not necessary to repeat those findings and conclusions herein. The Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein except as hereinafter noted. Specifically, at page 4 of the Award the ALJ references claimant's office visit with Dr. Dickerson that should reflect a December 5, 2006 date. And on page 9 of the Award the references to a recurrent herniated disk should reflect that the recurrent herniated disk was at L5-S1.

Respondent argues that claimant failed to meet his burden of proof that he suffered accidental injury arising out of and in the course of his employment. And if the claim is found compensable respondent further argues that claimant has not met his burden of proof to establish that he suffers permanent and total disability. The ALJ's Award contains a detailed analysis of respondent's arguments and a well reasoned decision that claimant suffered a compensable work-related injury and now suffers a permanent and total disability. The Board agrees and affirms the Award in all respects.

<u>AWARD</u>

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Bruce E. Moore dated October 30, 2009, is affirmed.

Dated this _____ day of March 2010. BOARD MEMBER BOARD MEMBER

c: Mitchell W. Rice, Attorney for Claimant
Mark E. Kolich, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge